Exam Number ______

UNIVERSITY OF KENTUCKY

COLLEGE OF LAW

PROPERTY PROFESSOR MOORE

FINAL EXAMINATION FALL 1995

TIME LIMIT: 3 HOURS

INSTRUCTIONS

This examination consists of 28 multiple choice questions, 6 short answer questions, and 1 essay question with 4 parts. The multiple choice questions are worth 2.25 points each for a total of 63 points. The short answer questions are worth a total of 27 points and the essay question is worth a total of 90 points. The number of points allocated to each question indicates how much time you should spend on it.

The examination is closed book. Casebooks, class notes, and other materials may not be used and should not be left near your desk.

Write your answers to the multiple choice questions in pencil on the computer form provided. Write your answers to the short answer questions in pen on the lines provided on the examination and write your answers to the essay question in pen in the blue books. Only write on the front side of each page of the bluebook(s). Be sure to put your exam number on this page, the computer form, and each blue book.

Be sure to budget your time carefully. No further writing will be allowed once time is called. At the end of the examination, please number your blue books, e.g., 1 of 2, 2 of 2, and turn in the exam, the computer form, your blue books, and any scratch paper you have used. These materials should be collected and turned in together inside one blue book.

All academic endeavors of the students of the University of Kentucky College of Law are governed by the Honor Code. The Honor Code prohibits lying, cheating, stealing, and interference with academic pursuits. In addition, the Honor Code places an affirmative duty to report a breach of the Code on all students. A failure to report is a violation of the Honor Code.

In turning in this exam, I hereby pledge on my honor as a student that I have neither given nor received any unauthorized aid on this exam.


PART III

QUESTION ONE
In 1980 Gracie Allen owned Blackacre, a ten-acre parcel of vacant land in rural Agricultria. Allen lived in Metropolis and had purchased the land in the hope that she might someday build a summer cabin there. She had never done so, however, and had only visited the area twice.

In early 1980, Allen received a telephone call from an old friend, George Burns, who lived near Blackacre. Burns told Allen that he had found a large gravel deposit on the western half of Blackacre, and would like to buy the property from Allen. Allen refused, stating, "I still hope to use the land one day, but I don't mind if you go ahead and take gravel for a while." In the summer of 1980, Burns moved excavating equipment onto Blackacre and began removing gravel. Allen died intestate in December 1980, leaving a 8-year old niece, Joannie Cunningham, as her sole heir. Cunningham lived in Wyoming.

In January of 1981 Burns sought to confirm his understanding with Allen but of course was unable to reach her. Upon inquiry he leaned of Allen's death, but was unable to determine the identity of Blackacre's new owner. That summer, he went ahead with his gravel removal. In addition, he moved a small tool equipment shed onto Blackacre, near the gravel deposit, and put "No Trespassing" signs around the entire perimeter of Blackacre.

The following summer, Burns cleared the entire western half of Blackacre and built a cottage on the site but did not disturb the eastern half of Blackacre. Every year, from 1982 through 1987, Burns spent the summer living in the cottage and removing and selling gravel from the western half of Blackacre. Each winter, he boarded up the tool shed and cottage, stored his furniture, and went to Arizona where he lived on the proceeds he received from the gravel removal.

In the fall of 1987, Burns was killed in an automobile accident. His will, properly signed, executed, and probated, left all of his property to his uncle, Kirk Douglas.

Douglas moved onto Blackacre in November, 1987 and remains there today. He sold gravel for a couple of years but quit doing so in 1989. At that time, he planted cherry trees on most of the property and fenced the entire property.

In December 1995, Joannie Cunningham brought suit to recover possession of Blackacre from Douglas. Douglas has come to your firm for advice. The senior partner has asked you to draft a memorandum discussing the strengths and weaknesses of Cunningham's claim and evaluating the likelihood of success of her action.

Assume that a statute in the jurisdiction provides that "an action to recover title to or possession of real property shall be brought within 10 years after the cause of action accrues, but if a person entitled to bring such an action, at the time of the cause of action accrues is within the age of minority or of unsound mind, such person, or the person claiming through him, may, though the period of 10 years has expired, bring the action within 4 years after the disability is removed." Further assume that the age of majority in the jurisdiction is 18.

QUESTION TWO
On December 31, 1949, Myers O'Melveny executed a warranty deed conveying Blackacre to Sutherland Asbill and Baker Botts, as tenants by the entirety, "so long as the land is used for residential purposes and should they cease to use the land for such purposes then Myers O'Melveny) retains the right to reenter and retake the premises." Six months later, O'Melveny executed a quitclaim deed conveying any interest he might retain in Blackacre to Miller Chevalier. Two years later, O'Melveny died leaving a will devising all of his property to his uncle, Leisure Donovan.

On January 1, 1950, Asbill married Botts. Shortly thereafter, Asbill and Botts moved into the large Victorian mansion they had built on Blackacre and spent the next twenty-five years contentedly raising a family there. Marital bliss, however, ended abruptly on September 15, 1980, Bott's 50th birthday, when Botts ran off with a stockbroker he'd recently met. Her children grown and facing years of solitude, Asbill decided to convert the Victorian mansion into a bed and breakfast. After spending tens of thousands of dollars having the locks changed, bathrooms added, and redecorating the bedrooms, Asbill opened a bed and breakfast in the Victorian mansion on September 15, 1981. The business was a smashing success serving the likes of Bobby Fisher, Greta Garbo, and Howard Hughes.

On July 4, 1995, having just learned of Asbill's use of Blackacre as a bed and breakfast, Donovan filed suit seeking possession of Blackacre. Chevalier joined the suit claiming title to Blackacre. Finally, Botts joined the suit seeking partition of Blackacre by sale.

Asbill loves the Victorian mansion and does not want to lose it. Nor does she want to divorce Botis. She has come to your firm for advice. The senior partner has asked you to draft a memorandum discussing the issues raised by the action and how a court is likely to resolve them. The partner does not know where Blackacre is located. Accordingly, she has asked you to discuss both majority and minority rules.

QUESTION THREE

On December 31, 1949, Myers O'Melveny executed a warranty deed conveying Blackacre to Sutherland Asbill and Baker Botts, as tenants by the entirety, "so long as the land is used for residential purposes and should they cease to use the land for such purposes then Myers O'Melveny) retains the right to reenter and retake the premises." Six months later, O'Melveny executed a quitclaim deed conveying any interest he might retain in Blackacre to Miller Chevalier. Two years later, O'Melveny died leaving a will devising all of his property to his uncle, Leisure Donovan.

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QUESTION THREE

(SUGGESTED TIME: 10 MINUTES)

Having partied late into the night of his thirtieth birthday, Hugh Grant hands Divine Brown the keys to his BMW and says, "Thanks for a great evening. I want to give you my car and everything in it." The car contains a VCR, a portable CD player, and 50 copies of the movie, Nine Months. The following morning, deeply regretting his impetuosity, Grant demands that Brown return his car and its contents but she refuses. Who owns the car and its contents?